

THE HONORABLE MARSHA J. PECHMAN

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

JANE DOE, an individual,

Plaintiff,

VS.

AMAZON.COM, INC, a Delaware corporation,
and

IMDB.COM, INC., a Delaware corporation,

Defendants.

No. 2:11-CV-01709-MJP

**PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION TO
DISMISS PURSUANT TO RULE 10(a)
AND CROSS-MOTION TO
PROCEED ANONYMOUSLY**

NOTE ON MOTION CALENDAR:
FRIDAY, DECEMBER 2, 2011

COMES NOW, Jane Doe, an individual (“Plaintiff”), in opposition to Defendants’ Motion to Dismiss Pursuant to Rule 10(a) and contemporaneously moves this Court for entry of an order allowing her to proceed with this litigation anonymously.

I. INTRODUCTION

This case is about information privacy. Specifically, whether online merchants can “data mine” certain consumer personal information, whether they can use that information to investigate consumers for commercial gain, and whether they can publish consumer personal

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information obtained from these business practices. In this case, Plaintiff used her credit card to purchase a subscription from Defendants over the Internet. During the subscription process in which Plaintiff provided her credit card information, Plaintiff did not consent to Defendants' use of her personal information for any other purpose than to process a "safe" and "secure" business transaction.¹ Instead, in addition to using Plaintiff's personal information for purposes of processing payment for the subscription, Defendants recorded and further used Plaintiff's personal information to investigate Plaintiff's personal life. Defendants then published some of Plaintiff's personal information on its public database, www.imdb.com, for the world to see, without Plaintiff's consent, and to her detriment.

The safety and security of the credit card transaction was especially important to Plaintiff in this case because her personal information, including her name, address and zip code, are not public knowledge. Ms. Doe has consciously guarded this information from the public. She doesn't disclose her legal name to the public; instead she uses an alias. She has never publicly associated the two identities. Thus, prior to the business transaction between Plaintiff and Defendants, Defendants *did not know* Ms. Doe's real name. Defendants acquired this private information through Plaintiff's subscription transaction and then used that information to investigate Plaintiff's private life. Armed with Ms. Doe's legal name and address, Defendants were able to uncover Ms. Doe's date of birth. Without her consent and under the guise of "improving [their] site,"² Defendants published Ms. Doe's date of birth on IMDb.com for the entire world to see.

Ms. Doe filed her Complaint against Defendants for the offending business practices

¹ The IMDbPro subscription page located at <https://secure.imdb.com/signup/signup> represents that the subscription process is "[s]afe & secure".

² Defendants emphasize that "improving [their] site" by adding Plaintiff's date of birth is a legitimate use of Plaintiff's personal information. *See* Defendants' Motion to Dismiss Pursuant to Rule 12(b)(6), Dkt. No. 15, page 5, line 32.

under the pseudonym “Jane Doe” to protect further disclosure of her personal information. She seeks injunctive relief requiring Defendants to remove her personal information from its public database and enjoining Defendants from further using or publishing her personal information. Coming forward in her real name would impact the purpose of her lawsuit which is to seek IMDb’s compliance with its obligation to maintain the privacy of her personal information. Thus, in order to prevent public disclosure of the personal information Defendants misappropriated from her (*e.g.*, her legal name, address and zip code), Plaintiff must sue anonymously.

II. STATEMENT OF FACTS

As discussed in Plaintiff’s Complaint, Defendants are in the business of gathering and publishing information about people in the entertainment industry. Compl. (Dkt. No. 1) ¶¶ 1-2. Their free website, www.imdb.com, is known as the world’s largest Internet Movie Database. *Id.* Defendants also offer subscription services to entertainment industry professionals such as IMDbPro and IMDbResume. *Id.* These services are aimed to facilitate employment on both sides of the industry; they give casting directors quick and easy access to a candidate’s profile and resume, and they give the candidate direct exposure to casting directors. *Id.* As such, IMDb.com is a powerful and well-connected player in the entertainment industry. Declaration of Duncan Crabtree-Ireland dated November 27, 2011 (“Crabtree-Ireland Decl.”) ¶ 4, line 17. Between the free IMDb.com service and the paid subscription-based services, individuals with casting authority in the entertainment industry widely rely on IMDb to obtain information used for decision-making in the casting process. *Id.* lines 18-20.

One of the personal data identifiers of people in the entertainment industry that Defendants seek to provide to the public is their date of birth. *See generally*, www.IMDb.com; *see also* Crabtree-Ireland Decl. ¶ 6, lines 12-14. Plaintiff alleges that Defendants’ business

practices are designed to uncover this sensitive personal data. *See* Compl. *passim*. One of the ways in which Defendants obtain people's dates of birth is by "data mining" their credit card information. *Id.* Ms. Doe is a victim of this trap. *Id.*

In 2008, Ms. Doe purchased a subscription to IMDbPro over the Internet using her credit card. Compl. ¶ 20. Ms. Doe's subscription information contained her legal name, address and zip code, among other highly sensitive personal information. *Id.* Not coincidentally, shortly after submitting her credit card information to pay for the IMDbPro subscription, Ms. Doe's legal date of birth appeared on her IMDb profile. *Id.* ¶ 21. Ms. Doe alleges in her Complaint that Defendants unlawfully acquired her personal and credit card information under false pretenses, indicating it would be used for one purpose (*e.g.*, processing payment) while knowing they would use it for another. *Id. passim*. Defendants see nothing wrong with these business practices. *See* Defendants' Motion to Dismiss Pursuant to Rule 12(b)(6) (Dkt. No. 15) *passim*.

II. ARGUMENT

A. Ms. Doe Should be Allowed to Proceed Anonymously Under the Unique Circumstances in this Case.

i. The special circumstances of this case justify secrecy of Ms. Doe's legal name.

Many federal courts, including the Ninth Circuit, permit parties to proceed anonymously when special circumstances justify secrecy. *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1067 (9th Cir. 2000) (*citations omitted*). The United States Court of Appeals for the Second Circuit has noted with approval factors to consider when determining whether to grant an application to proceed anonymously, with the caution that the list is non-exhaustive and district courts should take into account other factors relevant to the particular case under consideration. *Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185, 190 (2d Cir. N.Y. 2008). Relative to this case, factors other circuits consider when addressing anonymous complaints also include (1) whether the plaintiff's identity has thus far been kept confidential,

1 and (2) whether, because of the purely legal nature of the issues presented or otherwise, there is
 2 an atypically weak public interest in knowing the litigants' identities. *See, id.; see also, United*
 3 *States ex rel. Doe v. Boston Scientific Corp.*, 2009 U.S. Dist. LEXIS 59390 at *12-13 (S.D. Tex.
 4 July 2, 2009). In reviewing the balancing tests set forth by these other circuits, the Ninth Circuit
 5 joined its sister circuits and held that "a party may preserve his or her anonymity in judicial
 6 proceedings in special circumstances when the party's need for anonymity outweighs prejudice
 7 to the opposing party and the public's interest in knowing the party's identity." *Advanced Textile*
 8 *Corp.*, 214 F.3d at 1068.

10 The special circumstances of this case justify secrecy of Plaintiff's identity. First,
 11 the confidentiality of Ms. Doe's legal name is the subject of this action. Plaintiff's legal name
 12 and the association of her legal name with her alias are among Plaintiff's most confidential
 13 personal information. Plaintiff's Complaint alleges that Defendants unlawfully acquired this
 14 personal information from Plaintiff. Requiring Plaintiff to come forward in her real name would
 15 impact the purpose of her lawsuit, which is to seek Defendants' compliance with its obligation to
 16 maintain the privacy of her personal information, including her real name. Crabtree-Ireland
 17 Decl. ¶ 7. This case has garnered international attention. Declaration of John W. Dozier, Jr.
 18 dated November 28, 2011 ("Dozier Decl.") ¶ 2. Disclosing Plaintiff's legal name will
 19 undoubtedly steer thousands if not millions of peoples' attention to the private information that is
 20 the subject of Plaintiff's Complaint (e.g., her legal name, address, and date of birth), significantly
 21 exacerbating the harm for which Plaintiff seeks redress. Crabtree-Ireland Decl. ¶ 9. Plaintiff
 22 should be allowed to seek remedy for Defendants' invasion of her privacy without being subject
 23 to further invasion of that privacy.

26 Second, disclosure of Plaintiff's identity will subject her to severe retaliation,
 27 harassment and ridicule. This factor is discussed in detail in section A(ii), below. Other factors
 28

also weigh in favor of Plaintiff's anonymity in this case. Plaintiff's true identity has thus far been kept confidential. This is especially true in this case because Plaintiff's legal name is not public knowledge; she conducts her life under an alias. Despite the international publicity this case has garnered and Defendants' surreptitious attempts to "out" Plaintiff's identity through court filings, her identity remains confidential. Also, because of the purely legal nature of the privacy issues presented in this case, there is an atypically weak public interest in knowing the Plaintiff's identity. Instead, the public interest is focused on the merits of Plaintiff's Complaint.

ii. Ms. Doe reasonably fears exposure of her identity will subject her to severe retaliation, harassment, and ridicule.

The Ninth Circuit allows parties "to use pseudonyms in the unusual case when nondisclosure of the party's identity is necessary to protect a person from harassment, injury, ridicule or personal embarrassment." *Advanced Textile Corp.*, 214 F.3d at 1067-1068. Anonymity can be used to shield plaintiffs from economic injury. *Id.* at 1070. Thus, Courts should consider economic harm when determining whether to allow Plaintiff to proceed anonymously. *Id.* The Ninth Circuit Court of Appeals and others have concealed parties' identities in order to protect them from retaliation by third parties. *Id.* Thus, the district court should consider evidence of threatened retaliation by parties not before the court. *Id.*

For purposes of determining whether plaintiffs' fears justify allowing anonymity, plaintiffs are not required to prove that the parties intend to carry out the threatened retaliation. *Id.* at 1071. What is relevant is that plaintiffs were threatened, and that a reasonable person would believe that the threat might actually be carried out. *Id.* The district court should also consider plaintiffs' vulnerability to retaliation. *Id.* at 1072. *Post hoc* remedies for retaliation available in the district court do not make plaintiffs' fears unreasonable. *Id.* at 1071. This Court cannot remedy any harm to Plaintiff for the obvious reason that the court has no ability to protect her from reprisals once her identity is known. *See id.*, citing *Wirtz v. Continental Finance &*

1 *Loan Co. of West End*, 326 F.2d 561, 563-64 (5th Cir. 1964) (stating that "the most effective
 2 protection from retaliation is the anonymity of the informer") (*additional citations omitted*).
 3

4 Plaintiff satisfies this burden. She legitimately fears severe retaliation,
 5 harassment and ridicule from Defendants, employers, and the public. Dozier Decl. ¶¶ 3-5;
 6 Crabtree-Ireland Decl. ¶¶ 2, 5, 8. In this age of advanced technology, the type of harm society
 7 faces is different than that of years past, and include cyber bullying, social stigmatization, and
 8 loss of privacy, *inter alia*. The consequences of these new-age harms are far reaching. This case
 9 has garnered international attention. Dozier Decl. ¶ 2. Over 750 articles have been published on
 10 the Internet about this case. *Id.* The high profile nature of this case significantly increases
 11 Plaintiff's vulnerability to such retaliation. Crabtree-Ireland Decl. *passim*. Plaintiff's sole
 12 "complainant" status up against powerful corporate entities also elevates her vulnerability to
 13 retaliation in this case. *See* Crabtree-Ireland Decl. ¶¶ 4, 6, 8.
 14

15 As an unidentified individual, Ms. Doe is already the target of retaliation,
 16 harassment and ridicule. Dozier Decl. ¶ 3. She has been branded as "that 40 year old actress
 17 who sued Amazon and IMDb." *Id.*; *see also* Crabtree-Ireland Decl. ¶ 4. She is the subject of
 18 lewd and harmful messages regarding this lawsuit. Dozier Decl. ¶ 3. If identified, Ms. Doe fears
 19 that these attacks would severely worsen as they would be targeted directly at her. *Id.* The
 20 public would know her name and address, and have direct access to her, including on her
 21 IMDb.com profile. Ms. Doe also legitimately fears that disclosing her identity will subject her to
 22 industry blacklisting and loss of livelihood. *See* Crabtree-Ireland Decl. *passim*. She will
 23 permanently carry the stigma of "that 40 year old actress who sued Amazon and IMDb." *See id.*
 24 at ¶¶ 5, 8. Such stigmatization would significantly negatively impact her career and livelihood.
 25 *Id.* Her reputation would be forever ruined.
 26

27 Plaintiff also reasonably fears further retaliation from Defendants. Compl. ¶ 13;
 28

1 Dozier Decl. ¶ 4; Crabtree-Ireland Decl. *passim*. Defendants have a reputation of striking back
 2 at consumers who complain about their unauthorized publication of personal information.

3 Dozier Decl. ¶ 5; *see also* Crabtree-Ireland Decl. ¶¶ 6, 7, 9. Many consumers who have
 4 requested to have their dates of birth removed from IMDb.com have experienced vengeance
 5 from Defendants in the form of further loss of control of the individual's IMDb.com profile.

6 Dozier Decl. ¶ 5. Plaintiff has experienced Defendants' tyrannical behavior first hand. *Id.* ¶ 4;
 7 Crabtree-Ireland Decl. ¶ 9. Since complaining about her date of birth appearing on IMDb.com,
 8 Plaintiff's IMDb.com account has been "flagged," making it difficult for her to control any
 9 information about herself. Dozier Decl. ¶ 4. For example, Defendants refuse to acknowledge
 10 and publish certain of Ms. Doe's acting credits, whereas other actors in the same exact film with
 11 the same exact credit have the information available on their respective IMDb profiles. *Id.*
 12 Defendants' withholding of credits from Plaintiff's profile, combined with its publishing of her
 13 age, significantly affects her job opportunities and livelihood. *See* Crabtree-Ireland Decl. ¶¶ 4-
 14 5.
 15

16 As described above, Defendants' systematic bullying of consumers who have
 17 requested that their dates of birth be removed from IMDb.com is well documented. Recently,
 18 Defendants attempted to "out" Plaintiff through its court filings in this case. *See* Plaintiff's
 19 Emergency Ex-Parte Motion to Seal, Dkt. No. 20. Such actions are consistent with Defendants'
 20 means of retaliation against Plaintiff described herein. Armed with Ms. Doe's highly sensitive
 21 and personal credit card data, Defendants are in a position to severely further damage Ms. Doe.
 22 *See* Crabtree-Ireland Decl. ¶ 4. Until and unless the Court grants Plaintiff's injunctive relief, Ms.
 23 Doe legitimately fears that Defendants will continue to retaliate against her (*e.g.*, by publicizing
 24 more of the private information acquired during the credit card transaction, by further
 25 withholding movie credits from her IMDb.com profile, by influencing a Hollywood blacklisting
 26
 27 witholding movie credits from her IMDb.com profile, by influencing a Hollywood blacklisting
 28

1 against her). Dozier Decl. ¶ 4; Crabtree-Ireland Decl. *passim*. As described above, these fears
 2 are legitimate and Plaintiff is especially vulnerable to them. *See* Crabtree-Ireland Decl. *passim*.

3 **iii. There is no prejudice to Defendants in this case and the public interest is
 4 satisfied and best served without revealing Plaintiff's identity.**

5 “[A] party may preserve his or her anonymity in judicial proceedings in special
 6 circumstances when the party's need for anonymity outweighs prejudice to the opposing party
 7 and the public's interest in knowing the party's identity.” *Advanced Textile Corp.*, 214 F.3d at
 8 1068 (*internal quotations and citation omitted*). Defendants know Ms. Doe's true identity. *See*
 9 Plaintiff's Emergency Ex-Parte Motion to Seal, Dkt. No. 20. Defendants are able to defend the
 10 case on its merits and will not be hindered in the litigation if Plaintiff is permitted to litigate
 11 under the pseudonym “Jane Doe.” Thus, defendants suffer no prejudice and the Court must
 12 solely consider Ms. Doe's need for anonymity versus the issue of how the public's interest in the
 13 case is best served.
 14

15 Few topics concern the public more than privacy rights at the intersection of
 16 technology and the Internet. Privacy is everyone's business in 2011. Advanced technologies on
 17 the Internet allow for severe invasions of personal privacy. Defendants are among the largest
 18 online consumer websites in the world and thus have huge ability to invade and exploit consumer
 19 privacy. With technology comes responsibility. Plaintiff is not the first person to allege that
 20 Defendants are skirting that responsibility.³ This case has widespread implications with respect
 21

22
 23 ³ See, e.g., *Supnick v. Amazon.com, Inc.*, 2000 U.S. Dist. LEXIS 7073 (W.D. Wash. May 18, 2000) (granting class
 24 certification in a suit claiming defendants violated the Electronic Communications Privacy Act and violated
 25 plaintiff's and others' common law rights through their collection of personal information on the Internet); *see also*,
 26 *Crowley v. Cybersource Corp.*, 166 F. Supp. 2d 1263 (N.D. Cal. 2001) (plaintiff online purchaser brought a putative
 27 class action alleging that Amazon.com secretly transmitted, used and/or disclosed consumer personal and private
 28 information without such persons' authorization or consent); More recently, on October 14, 2011, U.S. Congressman Edward Markey published an open letter to Amazon's CEO demanding an answer to privacy issues with respect to Amazon's Kindle Fire product. The congressman's letter expresses concerns about what user information Amazon is collecting, how they collect it, and what they plan on doing with it. A news article and a copy of the congressman's letter can be viewed at the following web site: <http://techie-buzz.com/online-security/u-s-congressman-demands-amazon-answers-privacy-questions-concerning-kindle-fire.html>.

1 to consumer privacy rights and the public does not suffer by not knowing Plaintiff's true name in
 2 this case. Indeed, the public interest in this case supports Plaintiff's maintaining this action
 3 under pseudonym and seeing this case decided on the merits.

4 **B. Defendants' Request for Award Should Be Denied; Instead the Court Should
 5 Impose Sanctions Against Defendants For Filing an Untimely and Improper
 6 Motion.**

7 Pursuant to the local rules of this Court:

8 An attorney or party who without just cause fails to comply
 9 with...these rules...or who presents to the court unnecessary
 10 motions...or who otherwise so multiplies or obstructs the
 11 proceedings in a case as to increase the cost thereof unreasonably
 12 and vexatiously, may, in addition to, or in lieu of the sanctions and
 13 penalties provided elsewhere in these rules, be required by the
 14 court to satisfy personally such excess costs, and may be subject to
 15 such other sanctions as the court may deem appropriate.

16 GR 3(d)

17 Defendants request that the Court award their attorneys' fees and costs for their Rule
 18 10(a) Motion because Plaintiff "failed to comply with Rule 10(a) and properly name all parties to
 19 the Complaint (or, at minimum, seek leave of the Court for an exception to Rule 10(a))."
 20 Defendants' Motion to Dismiss Pursuant to Rule 10(a) (Dkt. No. 12) page 10, lines 9-14, 48;
 21 page 11, lines 1-3. Such request should be denied. Plaintiff filed her Complaint under the
 22 pseudonym "Jane Doe" as of right. *See EEOC v. ABM Indus.*, 249 F.R.D. 588, 592 (E.D. Cal.
 23 2008) ("Although some Circuits require plaintiffs to obtain leave of the court before filing an
 24 anonymous pleading, the Ninth Circuit does not.") Defendants' own Motion acknowledges this
 25 "exception to the rule." Defs.' 10(a) Motion, page 6, lines 11-15. Thus, Defendants' request for
 26 award is unmerited and should be denied. Instead, the Court should award Plaintiff her
 27 attorneys' fees and costs to defend Defendants' improper and vexatious Motion, including the
 28 fees and costs associated with Plaintiff's emergency Ex-Parte Motion to Seal Documents
 Previously Filed by Defendants, Dkt. No. 20.

1 Defendants' Rule 10(a) Motion is improperly before the Court on procedural grounds.

2 Pursuant to the Court-issued summonses served on Defendants in this case, Defendants were
3 required to respond to Plaintiff's Complaint by serving Plaintiff with "an answer...or a motion
4 under Rule 12 of the Federal Rules of Civil Procedure." See Summons, Dkt. No. 2.

5 Defendants did not comply with the Court's summonses. Instead, Defendants' served Plaintiff
6 with a Motion to Dismiss Pursuant to Rule 10(a). Dkt. No. 12. The Rule 10(a) Motion is neither
7 an answer nor a Motion under Rule 12 of the Federal Rules of Civil Procedure.

8 Similarly, pursuant to Local Civil Rule 7(e)(3), "[t]he filing of multiple dispositive
9 motions to avoid the page limits of this rule is strongly discouraged and successive motions may
10 be stricken." Local Civil Rule 7(e)(3). On November 9, 2011, Defendants filed *two* motions to
11 dismiss Plaintiff's Complaint *within several hours of each other*. In so doing, Defendants
12 multiplied proceedings and fees and expenses for Plaintiff by requiring Plaintiff to prepare and
13 file two opposition briefs. Defendants' Rule 10(a) Motion also caused Plaintiff fees and costs to
14 prepare and file an emergency ex parte motion to seal information included in Defendants' Rule
15 10(a) Motion filings to prevent the disclosure of her identity to the public. *See* Dkt. No. 20.
16

17 Defendants' Rule 10(a) Motion is also improperly before the Court on legal grounds.
18 Contrary to Defendants' legal premise that Plaintiff's Complaint must be dismissed because she
19 did not seek leave of the court prior to filing anonymously,⁴ *a plaintiff need not seek leave before*
20 *filing an anonymous complaint in this Circuit. See EEOC v. ABM Indus., supra.* Thus, the entire
21 legal underpinning of Defendants' Motion, that Plaintiff's Complaint must be dismissed because
22 she did not seek leave to file anonymously prior to filing her Complaint, is contrary to
23 established precedent in this Circuit. Accordingly, Defendants had no just cause for filing their
24
25
26
27

28⁴ See Defendants' Motion to Dismiss Pursuant to Rule 10(a), page 6, lines 17-25, page 7, lines 11-15.
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Motion at this stage of the litigation. Defendants should be sanctioned for their inappropriate court filings.

IV. CONCLUSION

For the reasons set forth above, Plaintiff requests that the Court: (1) deny Defendants' Motion to Dismiss Pursuant to Rule 10(a) in its entirety, (2) enter an order permitting Plaintiff to continue this litigation under the pseudonym "Jane Doe," (3) award Plaintiff her attorneys' fees and costs for responding to Defendants' Motion to Dismiss Pursuant to Rule 10(a), and (4) issue any further sanctions or restrictions on Defendants as the Court deems appropriate.

Dated this 28th day of November, 2011. Respectfully submitted,

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1
2 **CERTIFICATE OF SERVICE**
3
4

5 I certify that on November 28, 2011, I electronically filed the foregoing PLAINTIFF'S
6 OPPOSITION TO DEFENDANTS' MOTION TO DISMISS PURSUANT TO RULE 10(a)
7 AND CROSS-MOTION TO PROCEED ANONYMOUSLY with the Clerk of the Court using
8 the CM/ECF system, thereby sending notification of such filing to the following attorneys of
record.

9 Ashley A. Locke, Esq.
10 Breena Michelle Roos, Esq.
11 Elizabeth L. McDougall-Tural, Esq.
12 Perkins Coie LLP
13 1201 Third Avenue, Suite 4800
14 Seattle, Washington 98101

15 I certify under penalty of perjury that the foregoing is true and correct.
16

17 Dated this 28th Day of November, 2011.
18

19 **DOZIER INTERNET LAW, P.C.**
20

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